



Boston City Council

Committee on Government Operations

Maureen Feeney, *Chair*

May 19, 2009

Dear Councillors:

The Committee on Government Operations held a hearing to discuss three separate home rule petitions concerning evictions on certain foreclosed residential property in the city of Boston (Docket# 0395), a moratorium on foreclosures in the city of Boston (Docket #0396) and a foreclosure mediation program in the city of Boston (Docket #0397). These matters were sponsored by Councillor Turner, referred to this Committee on Wednesday, March 11, 2009, and heard at a public hearing on Tuesday, May 5, 2009 at which public comment was taken.

At the hearing several individuals from the administration, MAAPL, GBLS and citizens and housing advocates testified in support of all three petitions. Docket #0395 seeks to provide tenant protection against eviction as a result of foreclosure. This home rule petition would prevent a foreclosing owner from evicting a tenant without just cause. Some testifiers urged amending the home rule to include eviction protection for former owner occupants. An additional amendment that would allow foreclosing owners to evict if a purchase and sale agreement was executed with someone who intended to occupy the home was raised.

Several individuals voiced support for these suggestions in light of the increasing need for housing stabilization, citing that homeowners and tenants are being treated similarly under the law for determining legal tenancy status purposes. As such, the proposed new draft would afford the same protections to tenants and former owner occupants. Former owner occupants would pay the reasonable rent as established by HUD and there is an additional just cause reason for evicting if the aforementioned purchase and sale agreement is executed.

Docket #0396 would impose a 180-day moratorium on foreclosures of any home with four or less separate households occupied by the mortgagor. The moratorium is limited in scope and would only prevent foreclosures for these types of property for a limited period if the mortgage in question was presumptively unfair as defined. This would seek to grant mortgagors time to re-negotiate these bad loans and urge mortgagees to find equitable solutions.

Docket #0397 would establish a foreclosure mediation program, which would apply to a dwelling with four or less households occupied by the mortgagor. City designated mediators would work with the mortgagor and mortgagee to try and prevent foreclosures. If no agreement is reached, the foreclosure proceeding would resume after the set period of time. Failure to comply with this program would be a defense to foreclosure. The original draft designated the Boston Rental Housing Resource center as the administering agency, but in light of administration testimony at the hearing this designation has been left open. The proposed new draft would allow the administration to properly review its departments' capabilities for the program upon passage.

All three of these proposals are an admirable approach to tackling a complex issue. Hopefully these three initiatives will work jointly to solve an escalating housing crisis within the City of Boston.

By the Chair of the Committee on Government Operations, to which the following were referred:

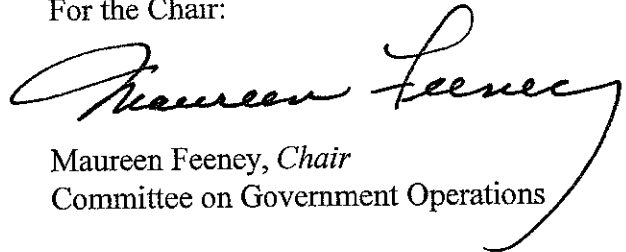
Docket #0395 Home Rule Petition: Evictions on certain foreclosed residential property in the city of Boston;

Docket #0397 Home Rule Petition: A foreclosure mediation program in the city of Boston; and

Docket #0396 Home Rule Petition: A moratorium on foreclosures in the city of Boston

based on information presented at the hearing and public comment gathered by the Committee and having considered the same, respectfully recommends that **dockets #0395 and #0397 ought to pass in new drafts and docket #0396 ought to pass.**

For the Chair:

A handwritten signature in black ink, appearing to read "Maureen Feeney". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Maureen Feeney, *Chair*
Committee on Government Operations

Offered by Councillor **CHUCK TURNER**, Ross, Flaherty, Yancey, LaMattina, Linehan, Yoon, Feeney, Consalvo, Ciommo



CITY OF BOSTON IN CITY COUNCIL

HOME RULE PETITION

ORDERED, That a petition to the General Court, accompanied by a bill for a special law relating to the City of Boston to be filed with an attested copy of this order be, and hereby is, approved under Clause 1 of Section 8 of Article II, as amended, of the Articles of Amendment to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only:

PETITION FOR A SPECIAL LAW RE: A FORECLOSURE MEDIATION PROGRAM IN THE CITY OF BOSTON

Section 1.

A mortgagee shall not initiate a foreclosure of a residential real property consisting of a dwelling house with accommodations for four or less separate households located within the City of Boston and occupied in whole or in part by the mortgagor unless it has made a good faith review of the borrower's financial situation and offered, whenever feasible, a loan modification, or other option to assist the borrower in bringing the arrears current. A good faith review of the borrower's financial situation includes, but is not limited to an evaluation of the mortgagor's eligibility for all loan modification programs established by the federal government or the mortgage industry, and if the mortgagor elects, participation in the Foreclosure Mediation Program established in subsection 3. Failure to comply with this section constitutes a defense to the foreclosure.

Section 2.

The commissioner of the division of banks shall make available to the Boston Rental Housing Resource Center a copy of the notice required by M.G.L. chapter 244, section 35A(f) to assist in tracking mortgagees subject to the Loss Mitigation and Foreclosure Mediation Program.

Section 3.

The City of Boston may establish a Loss Mitigation and Foreclosure Mediation Program, which shall be run by the Boston Rental Housing Resource Center. Not later than one-hundred and eighty (180) days after enactment of this act, the Boston Rental Housing Resource Center shall establish a foreclosure mediation program in actions to foreclose mortgages on residential real

property consisting of a dwelling house with accommodations for four or less separate households located within the City of Boston and occupied in whole or in part by the mortgagor.

Such foreclosure mediation program shall:

(1) address all the issues related to the foreclosure, including, but not limited to, reinstatement of the mortgage, and the restructuring of the mortgage debt; and

(2) be conducted by mediators who are designated by the Boston Rental Housing Resource Center, trained in mediation and all relevant aspects of the law, as determined by Boston Rental Housing Resource Center, have knowledge of the community-based resources that are available in the City, and have knowledge of any assistance programs established by the City or other sources. Such mediators may refer mortgagors who participate in the foreclosure mediation program to community-based resources when appropriate and to assistance programs.

(3) Upon receiving notice from the commissioner of the division of banks of a filing pursuant to M.G.L. chapter 244, section 35A(f), the Boston Rental Housing Resource Center shall send a notice of the availability of the mediation program to the mortgagor. The notice shall inform mortgagors of the program and encourage mortgagors to meet with a housing counselor or attorney prior to mediation. The mortgagor has fifteen business days to return a foreclosure mediation request form to the Boston Rental Housing Resource Center.

(4) The mediation period under the foreclosure mediation program established in this section shall commence when the Boston Rental Housing Resource Center sends notice to each party that a foreclosure mediation request form has been submitted by a mortgagor to the Boston Rental Housing Resource Center, which notice shall be sent not later than three business days after the Boston Rental Housing Resource Center receives a completed foreclosure mediation request form. Except as outlined in subsection (6), the mediation period shall conclude not more than sixty (60) days after the return day for the foreclosure action.

(5) The first mediation session shall be held not later than ten business days after the Boston Rental Housing Resource Center sends notice to all parties that a foreclosure mediation request form has been submitted to the Boston Rental Housing Resource Center. The mortgagor and mortgagee shall appear in person at each mediation session and shall have authority to agree to a proposed settlement, except that if the mortgagee is represented by counsel, the mortgagee's counsel may appear in lieu of the mortgagee to represent the mortgagee's interests at the mediation, provided such counsel has the authority to agree to a proposed settlement and the mortgagee is available during the mediation session by telephone or electronic means.

(6) Not later than five business days after the conclusion of the first mediation session, the mediator shall determine whether the parties will benefit from further mediation. The mediator shall file with the Boston Rental Housing Resource Center a report setting forth such determination and mail a copy of such report to each appearing party. If the mediator reports to the Boston Rental Housing Resource Center that the parties will not benefit from further mediation, the mediation period shall terminate automatically. If the mediator reports to the Boston Rental Housing Resource Center after the first mediation session that the parties may

~~benefit from further mediation, the mediation period shall continue for an additional thirty days.~~

(7) The Boston Rental Housing Resource Center shall establish policies and procedures to implement this section. Such policies and procedures shall, at a minimum, provide that the mediator shall advise the mortgagor at the first mediation session required by subsection (1) of this section that: (1) during the mediation period, the foreclosure process is suspended; (2) if the parties are unable to come to an agreement and the foreclosure process resumes, such mediation does not suspend the mortgagor's obligation to respond to the foreclosure action in accordance with applicable law; and (3) a foreclosure sale may cause the mortgagor to lose the residential real property.

(8) If no agreement is reached during the mediation, the mortgagor shall receive written notice as to when the foreclosure proceeding will resume and a description of the ensuing procedure.

Section 4. An affidavit demonstrating compliance with this act shall be filed by the mortgagee, or anyone holding thereunder, in any action or proceeding to foreclose on such residential real property.

ACCEPTED

CITY CLERK

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IN CITY COMMITTEE
CITY OF BOSTON

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Offered by Councillor ~~CHUCK TURNER, ROSS, FLAHERTY, YANCEY,~~
~~LAMATTINA, LINEHAN, YOON, FEENEY,~~
~~CONSALVO, CIOMMO~~



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